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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

QUINTNEY MARTIN, an individual,

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a SMITH'S FOOD AND DRUG, a foreign
corporation; DOES I through X; and ROE
ENTITIES I through X,

Defendants.

Case No.

NOTICE OF REMOVAL

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-22-850753-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

I.

NOTICE OF REMOVAL IS TIMELY

1. On April 5, 2022, Plaintiff QUINTNEY MARTIN, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".
2. SMITH'S was served with process on or about April 14, 2022. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.
3. The Complaint filed and served on SMITH'S contains a prayer for relief as follows:
 - "1. General damages in an amount in excess of \$15,000.00;

2. Special damages in an amount in excess of \$15,000.00;”. (Compl. at 9).

4. Defense counsel learned that the value of this case was sufficient for Federal jurisdiction on May 18, 2022. On that date, Plaintiff filed and served a Petition for Exemption from Arbitration in the pending State Court litigation. Therein, Plaintiff alleges he has incurred medical expenses in the amount of \$220,449.86. (Pl.’s Petition at 3).

Upon receiving this information, Defense counsel learned that the “amount in controversy” exceeds the jurisdictional minimum for diversity jurisdiction.

5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

6. The following pleadings have been entered and/or filed in State Court:

- a. Plaintiff’s Complaint filed April 5, 2022;
- b. Summons and Affidavit of Service of Summons and Complaint filed April 18, 2022;
- c. SMITH’S Answer to Plaintiff’s Complaint filed May 4, 2022;
- d. Peremptory Challenge of Judge filed May 16, 2022;
- e. Notice of Department Reassignment filed May 16, 2022; and
- f. Plaintiff’s Petition for Exemption from Arbitration was served on May 18, 2022.

7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

II.

DIVERSITY JURISDICTION EXISTS

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in

1 controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between
2 citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

3 **A. The Amount in Controversy Requirement is Satisfied.**

4 9. Plaintiff's Complaint contains a prayer for relief as follows:

5 "1. General damages in an amount in excess of \$15,000.00;

6 2. Special damages in an amount in excess of \$15,000.00;". (Compl. at 9).

7 10. In addition to the above, Plaintiff's Petition for Exemption from Arbitration served
8 on May 18, 2022 indicated that Plaintiff's medical expenses total \$220,449.86. (Pl.'s Petition at 3).

9 **B. The Parties Are Diverse.**

10 11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and
11 believes that Plaintiff was at the time of his Complaint a citizen and resident of the State of Nevada.
12 (*See* Compl. ¶2) .

13 12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio
14 Corporation with its principal place of business in the State of Utah.

15 **III.**

16 **REMOVAL TO THIS JURISDICTION IS PROPER**

17 13. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state
18 court action to this Court is appropriate.

19 14. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and
20 division embracing the place where the state action is pending 28 U.S.C. §108.

21 15. SMITH'S reserves the right to amend or supplement this Notice of Removal.

22 16. SMITH'S reserves all defenses, including, without limitation, the defense of lack of
23 personal jurisdiction.

24 17. SMITH'S requests a trial by jury of all issues.

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18. Defense counsel is providing Plaintiff, by and through his counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court, Clark County, Nevada, where the action is currently pending.

Dated this 25th day of May, 2022.

COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby
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